

Republic of Iraq
Federal Supreme Court
Ref. 86 / federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 18.11.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Ade Hatif Jabar whom are authorized in the name of the people to judge, they made the following decision:

The Plaintiff: the minister of justice/ being in this post –his agent the general director of the legal directorate (ha.ta.nun) .

The defendant: the Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

The claim:

The agent of the plaintiff claimed that the I.C.R. enacted the Unified Pension law No.(9) for 2014, article (60/1st) of the constitution stipulated that the laws' draft should be presented by the president of the republic or the council of ministers, as article (61/1st) authorized the I.C.R. to enact laws, it is not allowed to enact a law that wasn't submitted by one of the mentioned parties as stated in the ruling of the F.S.C.. the council of ministers has submitted the law' bile by his adopted forma, regulate the pension rights in article (22) of it, it regulate the pension rights of the

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president of the republic, the prime minister, ministers and whom in their post level in article (38) as exceptional of the general provisions to replace the legislation order No. (9) for 2005 which was regulate the pension rights of these categories. The pension law bill has repealed the legislation order clause (1st/a) of article (39), as the unified pension law No.(9) for 2014 differ from the law bill presented by the council of ministers in the sequence of articles and some provisions, as the F.S.C. decided in it decision (36/federal/2014) dated on 26.4.2014 the unconstitutionality of article (37) without revoking paragraph (a) of clause (1st) of article (38), which leads that article (38/1st/a) to remain, and rule to refer the pension salary of the of the president, the prime minister, the ministers and whom in there post level to the provisions of the general rule of calculating the pension salary of the employees that is stipulated in article (21) of the law, this leads to important change in the law contrary to the draft law presented by the council of ministers which violates the text of article (73/3rd) of the constitution. The agent of the plaintiff cleared that article (35) with its paragraphs has excluded judges, university service employees, ambassadors, members of high electoral committee and general directors for reasons related to their posts, it is not right to exclude them, it isn't available in the president of the republic, the prime minister, ministers and whom in their post level when repealed article (37) and referred to the general provisions stipulated in article (21) of the law, and that doesn't represent the opinion of the council of

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ministers. She requested to rule the unconstitutionality of paragraph (a) of clause (1st) of article (38) of the unified pension law No.(9) for 2014 and to repeal it. The defendant was informed with the case petition he responded with the draft dated on 17/8/2014 which stated that the request to repeal the article of the pension law consider as legislative interference because the legislative order No.(9) of 2005 was revoked by the law, the F.S.C. jurisdictions that are listed in it law and bylaw included repealing the laws and orders that contradicts the constitutional provisions, as the agent of plaintiff requested a legislative interference which is out of the F.S.C. jurisdictions, and requested to dismiss the lawsuit during scrutiny, the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff being in this post requested to rule the unconstitutionality of paragraph (a) of clause (1st) of article (38) of the unified pension law No.(9) for 2014 and to repeal it, because this repealing will re-activate the legislation order No.(9) for 2005, after the F.S.C. decided the unconstitutionality of article (37) of the pension law which regulate the pension rights of the categories covered with it including ministers in it decision No.(36/federal/2014) on 24.6.2014, accordingly they now covered with the

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provisions of article (21) of the pension law, as article (38) of the unified pension law stated ((first: all legal texts mentioned in legislations and orders that determine to the retired person or who deserve the pension a pension rights (salary or reward) that contradicts the provision of this law, shall be revoked, including what stated in paragraph (a) of this clause which stipulated the revoking of the legislation order (9) for 2005 that was amended by the order (31) for 2005)), as the mentioned legislative order and the rights it stated has been enacted by a law and repealed by a law which is the unified pension law and no longer in force from the validity date of the pension law 1.1.2014, as the plaintiff request is legislative choice by the legislative and executive powers, therefore it include legislative interference and the F.S.C. is not competent to conduct that but it is jurisdiction of the I.C.R. by a law bill presented by the presidency of the republic or the council of ministers. Accordingly the court decided to reject the plaintiff' lawsuit and to burden him the expenses and the advocacy fees for the defendant' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, issued publicly on 18/11/2014.